



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA-2019-0770; notice no. 22-01]

RIN 2120-AL41

Flight Attendant Duty Period Limitations and Rest Requirements

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action arises out of a statutory mandate in the FAA Reauthorization Act of 2018, which requires rulemaking to increase the minimum rest period for flight attendants in domestic, flag, and supplemental operations who are scheduled for a duty period of 14 hours or less. The statute also requires rulemaking to prohibit a reduction of the rest period under any circumstances. Consistent with the statutory mandate, the FAA proposes to amend its regulations to ensure that flight attendants scheduled to a duty period of 14 hours or less are given a scheduled rest period of at least 10 consecutive hours and that the rest period is not reduced under any circumstances.

DATES: Send comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send comments identified by docket number FAA-2019-0770 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel T. Ronneberg, Part 121 Air Carrier Operations, Air Transportation Division, AFS-220, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-1216; e-mail Dan.Ronneberg@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This proposed rule addresses the requirement of section 335(a) of the FAA Reauthorization Act of 2018 (the FAARA 2018), codified at 49 U.S.C. 44701 note.

Section 335(a) requires the FAA to conduct rulemaking to increase to 10 hours the minimum rest period for flight attendants in domestic, flag, and supplemental operations who are scheduled for a duty period of 14 hours or less; and to prohibit the reduction of the rest period under any circumstances. The FAA's existing regulations require only a 9-hour rest period for these flight attendants which can be reduced to 8 hours in certain circumstances. Consistent with the requirement of section 335(a) of the FAARA 2018, the FAA proposes to amend § 121.467(b)(2) and (b)(3) to require 10 hours of consecutive rest, remove the existing allowance for a reduction in rest time, and prohibit the reduction of the 10 hours of consecutive rest time under any circumstances.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Section 106(f) vests final authority in the Administrator for carrying out all functions, powers, and duties of the administration relating to the promulgation of regulations and rules.

Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority. Section 44701(a)(4) requires the Administrator to promulgate regulations in the interest of safety for the "maximum hours or periods of service of airmen and other employees of air carriers." Section 44701(a)(5) requires the Administrator to promulgate "regulations and minimum standards for other practices, methods, and procedure that the Administrator finds necessary for safety in air commerce and national security." In addition, 49 U.S.C. 44701(d)(1)(A) specifically states that the Administrator, when prescribing safety regulations, must consider the duty of an air carrier to provide service with the highest possible degree of safety in the public interest. Such authority applies to the oversight the FAA exercises to ensure safety of air carrier operations, including crewmember flight, duty, and rest requirements.

Further, section 335(a) of the FAARA 2018 (Pub. L. 115-254, 132 Stat. 3186 (Oct. 5, 2018)), codified at 49 U.S.C. 44701 note, requires the FAA to amend the flight attendant duty period limitations and rest regulation to increase the minimum rest period for flight attendants in domestic, flag, and supplemental operations who are scheduled for a duty period of 14 hours or less. Section 335(a) also prohibits reduction of the rest period under any circumstances.

III. Background

Flight Attendant Requirements

The FAA defines a flight attendant serving in operations conducted under 14 §part 121 as an individual, other than a flightcrew member,¹ who is assigned by a certificate holder conducting domestic, flag, or supplemental operations to duty in an aircraft during flight time and whose duties include activities related to ensuring cabin safety.² Section 121.391 specifies the minimum number of flight attendants required on board a flight, based on maximum payload capacity and seating capacity, for certificate holders conducting passenger-carrying operations under part 121.³

Any person serving as a flight attendant in part 121 operations must complete the training and qualification requirements of part 121 subparts N and O.⁴ These training and qualification requirements include specific programmed hours⁵, as well as airplane type specific knowledge and skill requirements.

Flight attendants are responsible for taking action during emergencies, including administering first aid, conducting aircraft evacuations, responding to inflight fires,

¹ A “flightcrew member” is a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time. 14 CFR 1.1.

² 14 CFR 121.467(a).

³ 14 CFR 121.391 provides that a certificate holder may, however, use more than the required number of flight attendants.

⁴ 14 CFR 121.392.

⁵ Under 14 CFR 121.421, “programmed hours” refers to hours of training or instruction in specific subjects, in a flight attendant training program.

managing medical emergencies, and handling passengers who threaten the safety of other passengers or might be unruly or disruptive. They must also be prepared to respond to situations that could threaten the safety of the passengers and the flight, including turbulent air, airplane decompression, and hijackings. They must know the location of emergency exits, fire extinguishers, first aid kits, flotation devices, oxygen masks, and emergency slides, and check emergency equipment before flight. They must assess and verify the suitability of passengers that occupy exit seating, brief passengers on safety equipment, evacuation, and crash landing procedures, and ensure compliance with applicable safety regulations.

Advance Notice of Proposed Rulemaking (ANPRM) and Discussion of Public Comments

On September 25, 2019, the FAA published an ANPRM, *Flight Attendant Duty Period Limitations and Rest Requirements* (84 FR 50349). The FAA determined that soliciting public input on the regulatory impact of the changes to flight attendant duty and rest requirements codified in Section 335(a) of the FAARA 2018 was appropriate. The FAA also intended for the ANPRM to provide additional avenues for public participation and to inform the FAA's analysis and rulemaking development.

The FAA received 216 comments on the ANPRM. Commenters included many individuals, Airlines for America (A4A), Endeavor Air, Air Line Pilots Association (ALPA), Transportation Trades Department (TTD), Transport Workers Union of America (TWU), American Academy of Sleep Medicine (AASM), Association of Flight Attendants (AFA), International Brotherhood of Teamsters (IBT), International Association of Machinists and Aerospace Workers (IAM), and Association of Professional Flight Attendants (AFPA).

The commenters raised three principal issues: increased rest period, costs, and implementation. A4A and Endeavor Air provided information indicating the increased

rest period would increase costs to certificate holders. ALPA, TTD, TWU, AASM, AFA, IBT, IAM, APFA, and many individuals supported the increased rest period, emphasizing the roles and responsibilities of flight attendants with regard to aviation safety, commenting that flight attendants' performance of their duties is fatigue-inducing and that they would benefit from increased rest. These commenters also stated that the increased rest would not always result in increased costs.

Rest Period

Many commenters supported increasing the rest period to at least 10 consecutive hours. AASM stated that providing flight attendants with a 10-hour minimum rest period should increase their sleep duration and subsequent on-the-job alertness and performance. Some commenters went further to request that the FAA require flight attendants to receive more rest hours, such as a period of 12 hours. Other commenters recommended that for every hour of duty, the FAA should require certificate holders to provide a flight attendant one hour or one and a half hours of rest. In addition, some commenters recommended that the rest period should only begin at hotel check-in, to maximize rest.

Some commenters asked the FAA to consider research on flight attendant fatigue and to look generally at its flight, duty, and rest scheme for flight attendants. AASM stated that further research is required to determine whether the minimum rest period should be modified for duty periods that encroach on the biological night. Additionally, one individual recommended the FAA review existing research on flight attendant fatigue from the Civil Aerospace Medical Institute (CAMI) and suggested that the FAA align flight attendant flight, duty, and rest requirements with flightcrew members' rest schemes.

A4A and Endeavor Air provided information indicating the increased rest period would increase costs to certificate holders. A4A commented that flight attendant rest

requirements are necessary and that they strongly support scientifically validated and data-driven countermeasures to prevent fatigue. A4A stated, however, that regulations should be limited to implementing only what is required by the statute and stated the FAA should incorporate cost mitigation measures. A4A also mentioned that the FAA could achieve the safety benefits of this regulation effectively and more efficiently through a risk-based rule in lieu of prescriptive hours-based requirements.

The FAA's action to propose this rulemaking complies with the requirements of section 335(a) of the FAARA 2018. Accordingly, the FAA has scoped this rulemaking to address the discrete, specific statutory mandate in section 335(a) and does not propose further amendments to flight attendant flight, duty, and rest schemes, as some commenters suggested. In addition, the FAA lacks data and supporting research or studies that would support a further increase in the rest period.

The rest requirement provided in this rulemaking is a minimum rest requirement. The FAA notes that, while not part of this rulemaking, section 335(b) of the FAARA 2018 mandates certificate holders conducting operations under part 121 to submit to the FAA flight attendant fatigue risk management plans (FRMP), which encompass a risk-based approach to flight attendant rest consistent with the FAA regulations on rest requirements for flight attendants. Certificate holders have the option to amend their FRMPs to provide flight attendants with more rest than the FAA requires, and nothing in this NPRM would preclude a certificate holder from increasing the rest period.

Cost

A4A stated that implementing this proposal would reduce schedule flexibility, result in a potential loss of income for flight attendants, and increase cost to certificate holders due to new hire turnover costs, training costs, scheduling software costs, and travel costs. A4A estimated that it would cost \$786 million over 10 years for the 66

percent of flight attendants who are employed by certificate holders that are members of A4A's organization, and estimated \$1 billion over 10 years for all certificate holders. A4A noted that the increased rest period may result in flight attendants having "unpaid idle time" away from their home base, resulting in a reduction in the average pay credit per calendar day spent at work. A4A also stated that certificate holders will need to plan for 11 hours of rest instead of 10 hours, in order to ensure an appropriate buffer for delays, and that eliminating certificate holders' ability to reduce rest during day-of operations will drive extensive additional costs and harm flight attendants, who might otherwise choose to stay on duty longer. A4A stated that flight attendants may need to change the way they bid for schedules and may have to choose between flying longer at night or flying more days during the month to get the same hours they are getting now. A4A also stated that less senior flight attendants are likely to be exposed to trips that are most impacted by the implementation of section 335(a) and less desirable schedules, and that flight attendants will have fewer days off per month because they will have to increase the number of trips they fly each month to maintain the same number of flight hours and standard of living they had prior to implementing section 335(a).

A4A further commented that, if a certificate holder does not increase its flight attendant scheduling construction and aircraft route scheduling buffer, it will simply have to manage the consequences and costs of delays that arise out of irregular operations and maintenance. In these circumstances, A4A suggested certificate holders will have to remove the flight attendants that are about to "time out" because they have not received the scheduled rest required by section 335(a) and must assign other flight attendants (if any are available, which might not be the case at many smaller airports) to finish the trip while paying both the timed out and active flight attendant. In the alternative, A4A mentioned certificate holders might push back the departure time of the next flight to

which these flight attendants are assigned in order to preserve the scheduled rest periods, creating a cascading chain of delays.

Endeavor Airlines provided a chart indicating that compliance with the increased rest period would result in initial costs of \$205,000 and recurring costs of \$203,800, based on their estimates for 2020, 2021, and 2022. It stated that because planned rest must increase, less daily activity would be scheduled, driving fewer days off. It also indicated that the increased rest would drive increased costs for software, new hires, and training.

AFA and IBT stated that multiple airlines have already included the additional rest that would result from the rule change required by section 335(a) in their contracts. AFA and IBT further state that these airlines have implemented the additional rest quickly and without incurring additional costs, and that the argument that the increased rest is too costly and difficult to implement is without merit. APFA, IAM, and TWU stated that it is unlikely that certificate holders would undertake any significant costs in implementing a change to a 10-hour minimum rest period for flight attendants. These commenters stated while some airlines claim possible additional costs, the vast majority of flight attendants are guaranteed approximately 10 hours of rest today under their existing terms of work. They also mentioned that costs of compliance would be minimal, as major certificate holders making up over 90 percent of total available seat miles of certificate holders affected by the proposed rule already schedule their crews with at least 10 hours of rest between shifts. TTD stated that current scheduling, operations, and training practices, combined with the fact that a number of certificate holders currently operate with 10-hour rest periods, means that costs incurred by certificate holders are likely to be tempered. TTD expressed skepticism that the rulemaking would qualify as an economically significant rule.

The FAA carefully analyzed the varied comments received on the economic impact of the required rulemaking. In the course of analyzing these comments to the ANPRM, the FAA determined it needed additional, individualized data. As a result, after the ANPRM comment period closed, the FAA conducted additional outreach as discussed later in this preamble.

Implementation

Many commenters expressed concern that the FAA is past due on rulemaking and implementation of the section 335(a) mandate. APFA, IAM, and TWU stated that delay in implementation is inconsistent with Congressional requirements and that flight attendants deserved more rest, noting the physically demanding aspects of flight attendant duties. TTD endorsed the comments filed by APFA, IAM, and TWU and called on the FAA to proceed immediately with an interim final rule to implement the flight attendant duty period and rest requirements mandated by the FAARA 2018, stating that the FAA must not create artificial impediments to the promulgation of this urgently needed regulatory change. TTD stated that even if the FAA determines that the proposed rule is economically significant, that determination should have no impact on expeditiously publishing a final rule. TTD further stated that by taking aggressive action to apply these fatigue protections, the FAA can swiftly improve the safety and security of the aviation system. ALPA indicated that it understood that the majority of U.S. flight attendants either currently receive 10 hours of rest or would receive such rest by the time the FAA issues a final rule, and that delay in implementing the rest requirement is not acceptable in view of aviation safety and security.

AFA and other commenters stated they assumed the FAA would allow a six-month implementation period. AFA noted that after the FAA published the ANPRM (September 2019), Delta Airlines announced its plans to implement the new rest period in

February 2020. AFA asserted that Delta's actions show that certificate holders can implement the new provisions in a few months' time. A4A, however, recommended the FAA propose and adopt an implementation period of at least 12 months to reduce costs.

Section 335(a) required the FAA, in a narrow timeframe, to modify an existing final rule to require that flight attendants receive increased rest. The FAA is implementing this rulemaking requirement consistent with the Administrative Procedure Act and DOT Order 2100.6A, Rulemaking and Guidance Procedures. Regarding comments addressing the compliance period, an extended implementation period would be inconsistent with the intent of this statutory mandate. Moreover, the FAA expects that a delay in the compliance period would only delay the realization of both benefits and costs. Additionally, a delay in the compliance period of less than a full year would be imperceptible in the monetized cost estimates.

Additional Outreach

The FAA received only limited quantitative information from certificate holders estimating costs in response to the questions contained in the ANPRM. A4A provided aggregated data, but the FAA needed individualized data to complete its regulatory impact analysis of the regulatory change required by section 335(a). Therefore, after the comment period for the ANPRM closed, the FAA conducted additional outreach to nine air carrier certificate holders that would be subject to the amended requirements. The FAA's outreach focused on the current amount of rest the certificate holder provided flight attendants; the impacts from implementing the statutorily mandated rest; and barriers to implementing the statutorily mandated rest. The FAA was able to gather sufficient data to assess the anticipated impacts of requiring the increased rest. Due to the proprietary and confidential nature of the information collected from certificate holders, the FAA has published this information as aggregated summary results. This NPRM and

the regulatory evaluation for this proposed rule, however, summarize the correspondence with certificate holders and the information the FAA received from certificate holders to the extent necessary to inform the public of the bases for its proposed determinations in the regulatory evaluation.

IV. Discussion of the Proposal

Currently, certificate holders conducting domestic, flag, and supplemental operations must fulfill the flight attendant duty period limitations and rest requirements in 14 CFR 121.467. Paragraph (b) of § 121.467 provides that a flight attendant scheduled to a duty period of 14 hours or less must be given a scheduled rest period of at least nine consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period. The certificate holder may schedule or reduce the rest period to eight consecutive hours if the certificate holder provides a subsequent rest period of at least 10 consecutive hours that is scheduled to begin no later than 24 hours after the beginning of the reduced rest period.

Section 335(a) of the FAARA 2018 requires “[modification of] the final rule”⁶ relating to flight attendant duty period limitations and rest requirements to “ensure that— (A) a flight attendant scheduled to a duty period of 14 hours or less is given a scheduled rest period of at least 10 consecutive hours; and (B) the rest period is not reduced under any circumstances.” Consistent with the requirement of section 335(a) of the FAARA 2018, the proposed rule would amend § 121.467(b)(2) and (b)(3) to require certificate holders operating under part 121 to provide 10 hours of consecutive rest for flight attendants scheduled to a duty period of 14 hours or less, remove the allowance for a

⁶ Section 335(a)(1) requires modification of “the final rule of the Federal Aviation Administration published in the Federal Register on August 19, 1994 (59 Fed. Reg. 42974; relating to flight attendant duty period limitations and rest requirements) in accordance with the requirements of this subsection.” The citation to the Federal Register publication refers to the final rule implementing the flight attendant duty period limitations and rest requirements of § 121.467.

reduction in rest, and explicitly prohibit a reduction in the 10 hours of rest. For the reasons described in the FAA's response to ANPRM comments on implementation, certificate holders would be required to comply with the proposed rule upon the effective date, 30 days after publication of the final rule in the Federal Register.

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$158,000,000, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. The FAA has provided a detailed Regulatory Impact Analysis (RIA) in the docket for this rulemaking. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

In conducting these analyses, the FAA has determined that this proposed rule: is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866; may have a significant economic impact on a substantial number of small entities; will not

create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Impact Analysis

This section provides a summary of the FAA's Regulatory Impact Analysis (RIA). Please see the RIA available in the docket for the rulemaking for more details.

Baseline for the Analysis

The baseline for analysis of the incremental benefits and costs of the proposed rule includes the regulations regarding flight attendant rest and existing practices, the affected entities and flight attendants, and potential safety and health risks. Again, note that the baseline presented in this document predates the coronavirus (COVID-19) public health emergency. It is possible that when the rulemaking becomes final, the actual conditions for certificate holders may differ from the information collected prior to the public health emergency.

Currently, certificate holders conducting domestic, flag, or supplemental operations under 14 CFR part 121 must provide a flight attendant scheduled to a duty period of 14 hours or less a scheduled rest period of at least 9 consecutive hours. The certificate holder may schedule or reduce the rest period to eight consecutive hours if the certificate holder provides a subsequent rest period of at least 10 consecutive hours that is scheduled to begin no later than 24 hours after the beginning of the reduced rest period. In response to the FAARA 2018 and other circumstances (including that some airlines schedule flight attendants to be synchronized with those for pilots), 12 certificate holders already schedule flight attendants for 10 hours of rest. The provision may be reflected in a certificate holder's collective bargaining agreement with the flight attendant union.

The FAA's Safety Performance Analysis System (SPAS) contains information on certificate holders conducting operations under part 121 and the number of flight attendants. Table 1 provides a summary by category of carrier.⁷

Table 1. Universe of Affected Entities and Flight Attendants

Category	Number of Certificate Holders	Total Number of Flight Attendants	Average Number of Flight Attendants per Certificate Holder
Major	4	91,420	22,855
National	13	21,805	1,677
Passenger and Cargo	5	703	141
Regional	21	14,196	676
Total	43	128,124	2,980
NVIS = National Vital Information System SPAS = Safety Performance Analysis System Source: FAA Safety Performance Analysis System (SPAS), SPAS NVIS Air Operator - 12/05/2019.			

Bureau of Transportation Statistics data indicate that flight attendants serve hundreds of millions of passengers on close to 10 million flights annually in the United States.⁸ Flight attendants perform safety and security functions while on duty in addition to serving customers. Voluntary reports submitted by flight attendants to the Aviation Safety Reporting System indicate the potential for fatigue to be associated with poor performance of safety and security related tasks. For example, in 2017, a flight attendant reported almost causing the gate agent to deploy a slide, which he/she attributed to, among other causes, having been fatigued.⁹ Additional examples of voluntary reports regarding flight attendant fatigue are included in the RIA. Other reports included poor response to a passenger incident and feeling pressure to work despite being fatigued.

⁷ SPAS categories are as follows: Majors: Fleet does not contain any "Cargo Only" configured aircraft; and greater than 25 percent of fleet are aircraft configured with maximum passenger capacity greater than or equal to 100 seats, and fleet size is greater than or equal to 400. Nationals: Fleet does not contain any "Cargo Only" configured aircraft, and greater than 25 percent of fleet are aircraft configured with maximum passenger capacity greater than or equal to 100 seats, and fleet size is less than 400. Regionals: Fleet does not contain any "Cargo Only" configured aircraft, and greater than or equal to 75 percent of fleet are aircraft configured with maximum passenger capacity less than 100 seats. Passenger and Cargo Only: Fleet includes "Passenger configured" aircraft and "Cargo Only" configured aircraft.

⁸ Bureau of Transportation Statistics T-100 Segment (flights) and Market (passengers) data. Available online at www.BTS.gov.

⁹ See Aviation Safety Reporting System Database Online (<https://asrs.arc.nasa.gov/search/database.html>) report 1452656 from May 2017.

Benefits

The benefits of the proposed regulation would include reductions in safety risks, and any improvements in flight attendant health, that may be associated with the increase in flight attendant minimum rest periods. Flight attendants must be prepared to respond quickly to emergencies including evacuations, crash impacts, post-crash or inflight fires, ditching,¹⁰ runway over runs, security events, and similar situations. Commenters on the ANPRM note that the scientific bases for fatigue impacts on task performance are well understood, although the specific impact to flight attendant task performance has not been well-studied. Benefits of increasing the minimum flight attendant rest period may accrue through reduced safety risks. However, as discussed in additional detail in the RIA, any reductions in safety risk are likely to be small since they would also depend on the frequency which safety-oriented tasks occur, and currently U.S. air carriers experience very few accidents resulting in death or serious injury. Additionally, given the potential impact of fatigue on health, the proposed rule could also result in health benefits for flight attendants.

The FAA does not have sufficient data to estimate a baseline level of safety risk associated with flight attendant fatigue. In addition, it is also difficult to estimate (and the FAA does not have data on) the impact of the proposed rule in reducing flight attendant fatigue-related performance errors (i. e., how outcomes will differ compared to under the current rest period). Similarly, because multiple factors affect flight attendant health, it is difficult to identify health risks specifically attributable to rest period-related fatigue and the impact of the proposed rest requirement in reducing that risk.

Costs

The FAA used data that it collects from certificate holders conducting operations under part 121 and information submitted in response to the ANPRM, as supplemented or

¹⁰ Refers to crash-landing into water an aircraft not designed for the purpose.

verified through additional outreach, to estimate the costs that may be associated with the proposed rule. To better understand the ANPRM responses, the FAA conducted additional outreach to three major, three national, and three regional certificate holders in January and February 2020. This effort assisted in applying the ANPRM comment responses to estimate costs.

The FAA used this data and information to estimate incremental costs, including new hires of flight attendants, onboarding, training, travel, and modifying crew scheduling software. As some of these certificate holders implemented the proposed rest requirement around the time the FAARA 2018 was enacted or shortly thereafter, uncertainty exists regarding whether implementation occurred due to anticipation of the required rule change or other business reasons independent of regulatory action. Therefore, the FAA measures the costs of the proposed rule from two baselines to capture the different levels of incremental effects attributable to the rule, consistent with the Office of Management and Budget’s (OMB) guidelines:¹¹

- Existing practices baseline – certificate holder practices at the time of the proposed rule
- Pre-statutory baseline – certificate holder practices at the time of the FAARA 2018.¹²

Table 2 shows the affected entities by category in each baseline scenario and the current number of flight attendants.

Table 2. Potentially Affected Entities

Category	Number of Certificate Holders with Incremental Costs	Number of Flight Attendants
Existing Practices Baseline		

¹¹ The OMB’s 2003 guidance on regulatory analysis, Circular A-4, is available online at: https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.

¹² OMB Circular A-4 requires agencies to use a pre-statutory baseline for regulatory analysis of statutory requirements (pp. 15 and 16): “In some cases, substantial portions of a rule may simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action. In these cases, you [the agency] should use a pre-statute baseline.”

Table 2. Potentially Affected Entities

Category	Number of Certificate Holders with Incremental Costs	Number of Flight Attendants
Major	2	41,217
National	11	19,458
Passenger and Cargo	4	437
Regional	14	6,152
Total	31	67,264
Pre-statutory Baseline		
Major	4	91,420
National	12	21,674
Passenger and Cargo	5	739
Regional	15	6,208
Total	36	120,041
1. The number of affected certificate holders does not equal the universe (total number) of certificate holders under both baselines because some carriers have implemented the rest for other reasons (e.g., regional carriers scheduling flight attendants with pilots).		

Table 3 provides the estimates of annualized and present value costs using both baselines. The key factor influencing the magnitude of the costs is the selection of the relevant baseline for the analysis. Note that uncertainties exist regarding the characterization of both baselines, as the FAA does not have complete information on existing practices or recent changes that carriers have made as a result of the FAARA 2018 or in anticipation of the rule. In addition, with respect to hires, it can be difficult to differentiate impacts due to a requirement to provide 10 hours of rest that cannot be reduced and other factors including growth or other trends. The outreach effort confirmed that the type of operations, which are specific to each certificate holder, affect the impacts.

Table 3. Summary of Estimated Costs (Millions)

Discount Rate	Annualized Cost	5-Year Present Value
Existing Practices Baseline		
7%	\$67.5	\$277.0
3%	\$67.3	\$308.3
Pre-statutory Baseline		
7%	\$117.9	\$483.5
3%	\$117.7	\$538.9

Table 4 provides a breakout by category of certificate holder (for the seven percent discount rate scenario). The FAA modeled costs per certificate holder as a function of the certificate holder's size (number of flight attendants). Table 5 shows the

estimated increases in flight attendants across categories by baseline scenario. These results are based on the hiring needs identified by commenters that responded to the ANPRM. However, the FAA acknowledges that the input values may not be sufficiently representative of the different certificate holders in each category.

Table 4. Annualized Costs by Category of Certificate Holder (Millions, 7% Discount Rate)

Category	Number of Certificate Holders	Annualized Cost	Average Annualized Cost per Certificate Holder
Existing Practices Baseline			
Major	2	\$45.3	\$22.7
National	11	\$17.6	\$1.6
Passenger and Cargo	4	\$0.3	\$0.1
Regional	14	\$4.2	\$0.3
Total	31	\$67.5	\$2.2
Pre-statutory Baseline			
Major	4	\$93.6	\$23.4
National	12	\$19.6	\$1.5
Passenger and Cargo	5	\$0.5	\$0.1
Regional	15	\$4.2	\$0.2
Total	36	\$117.9	\$2.7

Table 5. Estimated Hiring by Category of Certificate Holder

Category	Number of Certificate Holder	Increase in Flight Attendants
Existing Practices Baseline		
Major	2	377
National	11	149
Passenger and Cargo	4	3
Regional	14	36
Total	31	565
Pre-statutory Baseline		
Major	4	836
National	12	166
Passenger and Cargo	5	4
Regional	15	36
Total	36	1,043

Uncertainty

There are a number of uncertainties in the analysis. The hiring response by major certificate holders has potentially the largest impact on costs. The FAA is also uncertain about the extent to which airlines use flexible scheduling, and requests data and information from the public regarding how flexible scheduling is used. For example, reducing the hiring assumption for these certificate holders by half reduces estimated

costs by over 30 percent. A key uncertainty exists regarding any lingering or lasting changes to the industry following the COVID-19 public health emergency and the impact on benefits and costs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504 Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The FAA is publishing this Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting on the potential impacts to small entities from this proposal. The FAA invites interested parties to submit data and information regarding the potential economic impact that would result from the proposal. The FAA will consider comments when making a determination or when completing a Final Regulatory Flexibility Assessment. An IRFA contains the following:

- (1) A description of the reasons why the action by the agency is being considered;
- (2) A succinct statement of the objective of, and legal basis for, the proposed rule;
- (3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- (4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities

which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Reasons the Action is Being Considered

On October 5, 2018, Congress enacted the FAARA 2018. Section 335(a) of the FAARA 2018 requires modification of the flight attendant duty period limitations and rest requirements to “ensure that—(A) a flight attendant scheduled to a duty period of 14 hours or less is given a scheduled rest period of at least 10 consecutive hours; and (B) the rest period is not reduced under any circumstances.” On September 25, 2019, the FAA published an ANPRM to solicit input from the public on the regulatory impact of the mandated changes. The proposed rulemaking, if finalized, would modify the flight attendant duty period limitations and rest requirements as required by the FAARA 2018.

Objectives of the Proposed Rule

This proposed rule would modify the flight attendant duty period limitations and rest requirements in 14 CFR 121.467 consistent with the requirements of the FAARA 2018. As such, the minimum rest period for a flight attendant scheduled for a duty period of 14 hours would increase from at least 9 consecutive hours to at least 10 consecutive hours. The FAA would also remove the ability of the certificate holder to reduce the rest period that current regulations allow. This proposed rule would fulfill the statutory requirement to provide flight attendants additional rest, which certificate holders would not be permitted to reduce.

Description and Estimate of the Number of Small Entities

The FAA used the definition of small entities in the RFA for this analysis. The RFA defines small entities as small businesses, small governmental jurisdictions, or small organizations. In 5 U.S.C. 601(3), the RFA defines “small business” to have the same meaning as “small business concern” under section 3 of the Small Business Act. The Small Business Act authorizes the Small Business Administration (SBA) to define "small business" by issuing regulations.

The SBA established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS).¹³ These size standards generally define small businesses based on the number of employees or annual receipts. Table 6 shows the SBA size standards for certificate holders as an example. Note that the SBA definition of a small business applies to the parent company and all affiliates as a single entity.

Table 6. Small Business Size Standards: Air Transportation

NAICS Code	Description	SBA Size Standard
481111	Scheduled Passenger Air Transportation	1,500 employees
481112	Scheduled Freight Air Transportation	1,500 employees
481211	Nonscheduled Chartered Passenger Air Transportation	1,500 employees
481212	Nonscheduled Chartered Freight Air Transportation	1,500 employees
481219	Other Nonscheduled Air Transportation	\$16.5 million

Certificate holders affected by the proposed requirements for flight attendant rest are those authorized to conduct operations under 14 CFR part 121. To identify small entities, the FAA first identified the primary NAICS of the certificate holder or parent company, and then used data from different sources (e.g., company annual reports,

¹³ Small Business Administration (SBA) Table of Size Standards. Effective August 12, 2019. <https://www.sba.gov/document/support--table-size-standards>.

Bureau of Transportation Statistics) to determine whether the certificate holder meets the applicable size standard. Table 7 provides a summary of the estimated number of small entities to which this proposed rule would apply.

Table 7. Estimated Number of Small Entities

Category	Number of Entities	Number Small Entities	Percent Small Entities
Major	4	0	0%
National	13	4	31%
Passenger and Cargo	5	2	40%
Regional	21	4	19%
Total	43	10	23%

Projected Reporting, Recordkeeping, and Other Compliance Requirements

No new recordkeeping or reporting requirements are associated with the proposed rule. Small entity compliance with the proposed rule might entail hiring additional flight attendants, providing initial and recurring training, travel and per diem costs, and modifying software. In addition, costs might result from updating procedural manuals.

Table 8 shows the estimated annualized compliance costs by category and the number of small entities in each category. Based on average compliance costs, impacts do not appear disproportionate to small entities. Also, regional certificate holders, which account for four of the identified small entities, may be less likely affected by the proposed rule due to scheduling flight attendants with pilots. To the extent that small entities provide more unique services or serve markets with less competition, these entities might be able to pass on costs in the form of price increases.

Table 8. Average Cost of Compliance and Small Entities

Category	Number of Small Entities	Average Annualized Cost per Certificate Holder (millions) ¹
Major	0	\$22.7
National	4	\$1.6
Passenger and Cargo	2	\$0.1
Regional	4	\$0.3
1. Based on a baseline of existing practices and using a 7% discount rate.		

All Federal Rules That May Duplicate, Overlap, or Conflict

There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Significant Alternatives Considered

The FAA considered conducting a comprehensive review and revision of the flight attendant duty and rest regulations, similar to revisions the FAA made in the *Flightcrew Member Duty and Rest Requirements* rule. 77 FR 330 (Jan. 4, 2012). The FAA rejected this alternative because of the narrow scope of the statutory mandate for rulemaking. Additionally, the FAA lacks data-based rationale that indicates a comprehensive update is necessary. Also, increased comprehensive or stringent requirements could add burden rather than reduce burden on small entities.

Section 335(a) contains instruction on specific, prescriptive amendments to the existing rest requirement. Any lower-cost alternatives would contravene the statute. Therefore, the FAA did not identify or consider any lower-cost alternatives to the statutory mandate.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The requirements of this proposed

rule would not create an obstacle to foreign commerce because they would apply only to flight attendants serving in operations conducted by U.S.-certificate holders conducting operations under part 121.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., 5 CFR 1320.8(d) requires that the FAA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This action does not impose new information collection requirements as defined in 14 CFR part 1320.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that the proposed rule to address section 335(a) of the FAARA 2018 would not result in costs of \$155 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under NEPA in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6f, and that no extraordinary circumstances exist.

VI. Executive Order Determinations

A. Executive Order 12866 and Executive Order 13563

The FAA has determined this action is a significant regulatory action under section 3(f) of Executive Order 12866 that would be reviewed by the Office of Management and Budget (OMB). The rulemaking is also a significant regulatory action under DOT Order 2100.6A “Rulemaking and Guidance Procedures,” issued by the Department of Transportation on June 7, 2021.

Executive Orders 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), and 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011), require agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” Executive Order 13610, “Identifying and Reducing Regulatory Burdens,” 77 FR 28469 (May 14, 2012), urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Additionally, Executive Orders 12866, 13563, and 13610 require agencies to provide a meaningful opportunity for public participation. Accordingly, the FAA invites

comments on these considerations, including any cost or benefit figures or factors, alternative approaches, and relevant scientific, technical and economic data.

B. Executive Order 13132, Federalism

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” The Agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Consistent with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” and FAA Order 1210.20, “American Indian and Alaska Native Tribal Consultation Policy and Procedures,” the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to uniquely or significantly affect their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this proposed rule.

D. Executive Order 13609, Promoting International Regulatory Cooperation and International Trade Analysis

Under Executive Order 13609, “Promoting International Regulatory Cooperation,” 77 FR 26413 (May 4, 2012), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, regulatory approaches developed through international cooperation can provide equivalent protection to standards developed independently while also minimizing unnecessary differences.

VII. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The Agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without

incurring expense or delay. The Agency may change this proposal in light of the comments it receives.

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person in the FOR FURTHER INFORMATION CONTACT section of this document. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of the ANPRM, NPRM, all comments received, any final rule, and all background material may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s Website at <https://www.federalregister.gov> and the Government Publishing Office’s website at <https://www.govinfo.gov>. A copy may also be found at the FAA’s Regulations and Policies website at https://www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

List of Subjects in 14 CFR Part 121

Air carriers, Aviation safety, Safety, Transportation

The Proposed Amendment

For the reasons set forth in the preamble, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 121--OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112-95, sec. 412, 126 Stat. 89, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44729, 44732; 46105; Pub. L. 111-216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112-95, 126 Stat 62 (49 U.S.C. 44732 note); Pub. L. 115-254, 132 Stat 3186 (49 U.S.C. 44701 note).

2. Amend § 121.467 by revising paragraphs (b)(2) and (3) to read as follows:

§ 121.467 Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental operations.

* * * * *

(b) * * *

(2) A flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (b)(1) of this section must be given a scheduled rest period of at least 10 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(3) The rest period required under paragraph (b)(2) of this section may not be reduced to less than 10 consecutive hours.

* * * * *

Issued in Washington, DC, under authority provided by 49 U.S.C. 106(f) and 44701(a)(5) on October 20, 2021.

Steve Dickson,

Administrator,

Federal Aviation Administration.

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